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7 *Income Fund and Franklin California High*
8 *Yield Municipal Fund*

9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 In re:
13 CITY OF STOCKTON, CALIFORNIA,
14 Debtor.

Case No. 12-32118 (CMK)_
Chapter 9
Adv. Proceeding No. 13-02315-C
OHS-1

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17 WELLS FARGO BANK, NATIONAL
ASSOCIATION, FRANKLIN HIGH
18 YIELD TAX-FREE INCOME FUND,
AND FRANKLIN CALIFORNIA HIGH
19 YIELD MUNICIPAL FUND,

Plaintiffs.

v.

21 CITY OF STOCKTON, CALIFORNIA,
22 Defendant.

**EXHIBITS A – B IN SUPPORT OF (A)
OBJECTION OF FRANKLIN
HIGH YIELD TAX-FREE INCOME
FUND AND FRANKLIN CALIFORNIA
HIGH YIELD
MUNICIPAL FUND TO MOTION
TO SHORTEN NOTICE ON
DEFENDANT CITY OF
STOCKTON’S MOTION FOR
JUDGMENT TO BE ENTERED IN
FAVOR OF PLAINTIFFS; AND
(B) REQUEST FOR TELEPHONIC
STATUS CONFERENCE**

Date: April 7, 2014
Time: 1:30 p.m.
Dept: C, Courtroom 35
Judge: Hon. Christopher M. Klein

1 **Exhibit A** LETTER DATED MARCH 30, 2014..... 3
2 **Exhibit B** ELECTRONIC MAIL DATED MARCH 31, 2014 7

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EXHIBIT A

JONES DAY

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March 30, 2014

VIA EMAIL (malevinson@orrick.com)

Marc A. Levinson, Esq.
Orrick, Herrington & Sutcliffe LLP
400 Capital Mall, Suite 3000
Sacramento, CA 95814-4497

**Re: *Wells Fargo Bank, N.A., et al. v. City of Stockton, California*
(*In re City of Stockton, California*),
Adv. Proc. No. 13-02315 (Bankr. E.D. Cal.)**

Dear Marc:

Reference is made to the *Defendant City Of Stockton's Motion For Judgment To Be Entered In Favor Of Plaintiffs* [Docket No. 1288] (the "Motion") and the *Motion To Shorten Notice On Defendant City Of Stockton's Motion For Judgment To Be Entered In Favor Of Plaintiffs* [Docket No. 1290] (the "Motion to Shorten"), which were filed in the above-noted adversary proceeding (the "Proceeding") on the evening of Thursday, March 27, 2014.

While we appreciate the City's apparent agreement to a judgment in favor of Franklin on "the major issues" in the Proceeding, Motion at 2, we write to inform you that the City's attempt to schedule the Motion for hearing on April 7 – just eleven days after filing and service – is improper, and to request that the City properly schedule the Motion for a hearing in accordance with the applicable Local Bankruptcy Rules (the "Local Rules").

The City invokes Local Rule 9014-1(f)(3) for the proposition that the Court may "shorten notice of the hearing on the Motion for Judgment from 14 days to 11 days." Motion to Shorten at 2 (asserting that the notice period only will be "shortened by three days"). In so doing, the City apparently presumes that it could have provided just fourteen days' notice of the hearing on the Motion pursuant to Local Rule 9014-1(f)(2).

That presumption is incorrect. By its express terms, Local Rule 9014-1(f)(2) "shall not be used for a motion filed in connection with an adversary proceeding." As a consequence, Local Rule 9014-1(f)(1) requires 28 days' notice of the Motion – which seeks dispositive relief in the Proceeding – and the procedures for shortening time set forth in Local Rule 9014-1(f)(3) do not apply, as they are premised on the availability of Local Rule 9014-1(f)(2)'s truncated

Marc A. Levinson, Esq.
March 30, 2014
Page 2

“alternative” notice procedure. We therefore request that the City re-notice the Motion in order to provide 28 days’ notice of hearing as required by Local Rule 9014-1(f)(1).

Shortened notice would not be an issue if the City truly sought “to give plaintiffs the relief they have requested” in their Complaint. Motion to Shorten at 2-3. Unfortunately, that is not actually what the City seeks to accomplish by the Motion. To the contrary, while the Motion would result in judgment in favor of the plaintiffs in respect of Count 1 of the Complaint, it would prejudice Franklin’s pursuit of the other Counts in the Complaint and is highly objectionable.

Specifically, in Counts 2, 3, and 4 of the Complaint, Franklin seeks in part (1) a declaration that the applicable Agreements give rise to an allowed claim secured by a valid, perfected and enforceable security in and lien upon the Property, and (2) a determination of the value of the collateral that secures that claim.¹ By the Motion and proposed form of Judgment accompanying the Motion, the City apparently seeks dismissal without prejudice of those Counts while maintaining the right to object to and dispute the secured claim that Franklin seeks to establish in the Proceeding, which the City proposes “can later be resolved outside of the” Proceeding. Motion at 6.

This is not “a judgment in favor of plaintiffs.” It is a motion to dismiss, and it is patently unacceptable. Without cataloging the entirety of Franklin’s objection to the Motion, the entire purpose of the Proceeding is to determine the nature, extent and allowability of the plaintiffs’ secured claim against the City. Such a determination is inextricably intertwined with confirmation of the City’s Plan, which is the reason why the Court ordered that the confirmation hearing and the trial in the Proceeding take place concurrently and that all pre-trial and pre-hearing procedures be coordinated and conducted on the same schedule. Unless the City is willing to stipulate to judgment in Franklin’s favor with respect to the allowability, nature, extent and value of the secured claim at issue in Counts 2, 3 and 4, the Proceeding must continue on the schedule ordered by the Court long ago. Indeed, trial is just six weeks away, fact discovery is now closed, expert reports have been filed, and pre-trial briefs are due in a week (on April 7).

We find it curious that the City waited to file the Motion until after depositions concluded and Franklin filed its expert reports, and that the City acted without ever mentioning that it would like to discuss a consensual stipulation (particularly given that we are in daily contact regarding pre-trial matters). In any event, we remain happy to discuss with you an acceptable form of judgment regarding Counts 1 and 5 of the Complaint and would welcome any other stipulations that would narrow the issues that need to be addressed in the pre-trial briefs and adjudicated at trial and otherwise would help the City achieve its goal of minimizing the time, effort and professional fees associated with this litigation. To assist in that regard, we have revised the proposed stipulation of uncontested facts that we sent to you last January (to which

¹ Capitalized terms not defined in this letter have the meanings given to them in the Complaint.

Marc A. Levinson, Esq.
March 30, 2014
Page 3

the City never responded) to include additional matters that proved undisputed in discovery. A copy is attached.

I have no doubt we will be able to reach agreement regarding Counts 1 and 5 and other matters in order to minimize the remaining areas of dispute in the Proceeding. Please contact me immediately to discuss so that we can seek an accord in time to avoid addressing unnecessary issues in the pre-trial briefs due next week. Please also confirm that the City no longer seeks a hearing on the Motion on April 7. If we do not hear from you in that respect by the end of the day on Monday, March 31, we will seek input of the Court regarding scheduling.

Thank you.

Very truly yours,

/s/ Joshua D. Morse

Joshua D. Morse

Attachment

cc: (all via email)
Norman C. Hile, Esq.
Patrick B. Bocash, Esq.
Jeffrey D. Hermann, Esq.
James O. Johnston, Esq.

EXHIBIT B

From: "Bocash, Patrick B." <pbocash@orrick.com>
To: Joshua D Morse <jmorse@jonesday.com>, James O Johnston <jjohnston@jonesday.com>,
Cc: "Hile, Norman C." <nhile@orrick.com>, "Levinson, Marc A." <MALEVINSON@Orrick.com>,
"Hermann, Jeffery D." <jhermann@orrick.com>
Date: 03/31/2014 03:13 PM
Subject: RE: Wells Fargo Bank, N.A., et al. v. City of Stockton, California (In re City of Stockton, California),
Adv. Proc. No. 13-02315 (Bankr. E.D. Cal.)

Josh,

In response to your letter of March 30, 2014, you are correct that we referenced the wrong local rule. We will be filing an errata making clear that we are seeking shortened time on 28-days, not 14. Marc will follow up with you tomorrow on the substantive portions of your letter. It may be that we can come to an agreement regarding disposition of all or part of the Adversary Proceeding.

Thanks,

Pat

From: Joshua D Morse [mailto:jmorse@jonesday.com]
Sent: Sunday, March 30, 2014 1:19 PM
To: Levinson, Marc A.
Cc: Hile, Norman C.; Bocash, Patrick B.; Hermann, Jeffery D.; James O Johnston
Subject: Wells Fargo Bank, N.A., et al. v. City of Stockton, California (In re City of Stockton, California), Adv. Proc. No. 13-02315 (Bankr. E.D. Cal.)

Please see attached letter.

I have also included a soft copy of the proposed stipulation of uncontested facts referenced in the letter.

Joshua D. Morse
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